

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	§	
	§	
Performance Measurements and Standards	§	
for Unbundled Network Elements and	§	
Interconnection	§	CC Docket No. 01-318
	§	
Performance Measurements and Reporting	§	
Requirements for Operations Support	§	
Systems, Interconnection, and Operator	§	CC Docket No. 98-56
Services and Directory Assistance	§	
	§	
Deployment of Wireline Services Offering	§	
Advanced Telecommunications Capability	§	CC Docket No. 98-147
	§	
Petition of Association for Local	§	
Telecommunications Services for	§	
Declaratory Ruling	§	CC Docket No. 96-147, 96-98, 98-141
	§	
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**Comments of the Public Utility Commission of Texas**

On November 19, 2001, the Federal Communications Commission (FCC) released a *Notice of Proposed Rulemaking (NPRM)* in the Matter of Performance Measurements and Standards for Unbundled Network Elements and Interconnection.<sup>1</sup> In this *NPRM*, the FCC seeks comment on whether it should adopt a limited number of measurements and standards for evaluating incumbent local exchange carrier (ILEC) performance with respect to pre-ordering, ordering, provisioning, repair and maintenance functions. The *NPRM* further seeks comment on the use and scope of any national performance measurement standard, and the appropriate review or sunset mechanism should they adopt national standards. In addition, the *NPRM* requests industry's opinion of the pros and cons of adopting national measurements and standards. The FCC is also interested in learning how to balance CLECs' concerns about poor provisioning of UNEs,

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<sup>1</sup> The FCC has decided to fold all relevant proceedings (CC Docket No. 98-56, No. 98-147, No. 98-147, 96-98, 98-141) relating to measurements and standards for UNEs into CC Docket No. 01-318.

interconnection trunks and collocation with the ILECS concern about the number and cost of state and federal measurements and standards.

The Texas Commission is particularly interested in the FCC's determination of issues related to performance measurements in light of developments that the Texas Commission has experienced in implementing and monitoring performance measurements under Section 271. The Texas Commission has extensive experience in establishing, monitoring, and modifying performance measurements in order to ensure that SWBT continues providing CLECs with parity performance or a meaningful opportunity to compete, depending upon whether an appropriate retail analogue exists.<sup>2</sup> Thus, the Texas Commission believes that it is in a unique position to provide comments to the FCC's NPRM.

#### **I. Harmonizing State and National Measurements and Standards and Reducing Regulatory Burdens**

The Texas Commission believes that there is benefit in establishing standardized measures and looks forward to working with the FCC in developing more efficient ways to monitor ILEC performance. However, the Texas Commission believes that the role that the state commissions have historically played, creating, implementing, and monitoring the performance of ILECs, is vital to the continued viability of a competitive market. In other words, the Texas Commission applauds uniformity and efficiency, but not at the expense of valuable tools that ensure a level playing field.

In Texas, approximately 100 performance measurements have been established collaboratively in order to capture all aspects of SWBT's performance. These measures were painstakingly developed during SWBT's Texas 271 proceeding and have largely been adopted by other states in the SWBT region. The Texas Commission conducts reviews of the performance measurements every six-months in order to ensure that the measurements are capturing the correct data and remain meaningful. During the six-month review process, interested parties are allowed to present evidence regarding any performance measurement that they believe needs modification, deletion, or addition. Parties regularly submit changes regarding all aspects of the business rules including,

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<sup>2</sup> The Texas Commission has established parity standards where an apples-to-apples comparison can be made. However, where it is determined that such a comparison is not possible, an appropriate benchmark has been set in order to ensure CLECs have a meaningful opportunity to compete.

definitions, calculations, exclusions, and benchmarks. The Texas Commission believes that this process has worked smoothly and produced a set of comprehensive performance measurements that ensure SWBT's continued compliance. That is not to say that we are immune to efficiency and standardization. The Texas Commission is cognizant of the fact that too many measures may lead to overregulation and unnecessary cost restraints on the ILEC. To that end, the Texas Commission has worked to reduce the overall number of the performance measurements and add additional measurements, only when an aspect of performance that is critical to meaningful competition, is clearly not being captured.

Considering the limited number of measurements that have been proposed in the NPRM, one of the Texas Commission's concerns is that several areas of performance may not be captured. Although the Texas Commission agrees with the broad subject areas outlined in the NPRM (i.e. preordering, ordering, provisioning, maintenance and repair) we do not believe that the proposed measurements sufficiently capture all of the vital data underlying these subject matters. Simply considering the large disparity in the number of measures currently implemented in Texas and other states and the limited number of measures proposed in the NPRM leads to the question of what is missing. With that in mind, the Texas Commission believes that FCC's goal in limiting regulatory burdens and minimizing reporting costs can be best accomplished by working with state regulatory agencies to ensure consistency and viability in the metrics that are reported, rather than adopting a limited number of measurements under a least common denominator approach.

In addition, the Texas Commission does not believe the FCC's goals are accomplished by simply preempting the state plans. The FCC must balance the interest of streamlined reporting with competitive guarantees that state performance remedy plans such as the one in Texas provide to CLECs. Accordingly, the Texas Commission believes that action by the FCC that establishes consistent, minimum requirements or supplements the state plans will further facilitate competition, as long as the FCC ensures that any requirements it ultimately adopts are: 1) minimally, as stringent as the strongest state plans; and 2) do not preclude the states from adopting additional measures to the extent they are necessary.

First, the FCC must ensure that the approach it adopts is as stringent as the strongest plans at the state level. The Texas Commission's experience shows that the

performance measurements and associated remedy plan allows the Commission to objectively monitor SWBT's performance. The Texas Commission reviews and analyzes SWBT's performance monthly and routinely requests additional explanation or information should one area of performance become particularly troublesome for a period of time. This consistent and frequent monitoring helps the Texas Commission identify potential patterns in SWBT's performance, allowing those areas to be addressed quickly.

Second, the Texas Commission believes that the FCC should not preclude states from adopting necessary requirements, in addition to any adopted at the federal level. For instance, in Texas there are four market regions for which SWBT currently reports its performance. Reporting was set up in this way to ensure that SWBT would provide adequate performance across the state and discourage SWBT from targeting pockets of competition. Likewise, there may be instances where a particular product or element may be important to capture in one state but not in another. For example, CLECs in some states may not have multiple OSS interface choices that CLECs enjoy in Texas or some interfaces may simply be different from state to state. Thus, allowing states to establish additional requirements, beyond those established at the federal level, will ensure that states have appropriate input to tailor measurements where necessary.

Finally, the Texas Commission believes that the establishment of a joint federal-state task force to develop and implement any directives resulting from this proceeding would prove beneficial. As indicated earlier, the Texas Commission is not opposed to standardization and in fact, in some of the SWBT states, such action has already occurred. For instance, the six-month review process has been coordinated with other state Commissions (Arkansas, Kansas, Missouri, and Oklahoma) to ensure as much consistency across the SWBT five-state footprint as possible. This cooperation has worked well and there is no reason to believe that this type of collaboration would not be successful at the federal level.

## **II. Enforcement**

The Texas Commission believes that an adequate remedy plan or enforcement mechanism is vital to ensuring proper performance from the ILEC.<sup>3</sup> For example, in

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<sup>3</sup>*Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Service in Texas, Memorandum*

Texas, SWBT is potentially liable for up to \$289 million per year for disparate treatment to CLECs. It is important that any remedy plan contain adequate liquidated damages and/or penalty payments for two reasons. First, the self-executing nature of these payments is vital to ensuring the ILEC continues to provide CLECs with parity treatment. When the ILEC fails to meet those standards, no delay occurs and no further regulatory intervention is necessary. Second, the plans overall liability scheme should incent the ILEC to provide better performance, rather than allowing the ILEC to consider minimal payments as a cost of doing business. In addition, payments made to CLECs, should adequately compensate the competitor in proportion to the harm suffered.

### **III. Performance Measurements and Standards**

The NPRM has asked for comment on proposed individual measurements. However, rather than extensively critique the measurements proposed, which we believe are generally adequate to capture the performance they are designed to measure, the Texas Commission believes it more beneficial to address areas of performance that we believe are not captured by the proposed measurements and why those areas are vital to any measurements the FCC ultimately adopts.<sup>4</sup> In addition, the Texas Commission believes that the apparent omission of resale and UNE-P from the proposed measurements will have a chilling effect on a significant segment of the competitive market. In Texas, over seventy percent of the access lines that are served by CLECs are provided via resale or UNE-P. By not including these products within the proposed measurements, ILECs may be relieved from providing adequate service in these important areas. ILECs may be able to concentrate on facilities based entry to the

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Opinion and Order, 15 FCC Rcd 18354 (*SWBT Texas 271 Order*); *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, para. 433. (*Bell Atlantic New York Order*). (Noting five critical characteristics of a remedy plan: potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; a reasonable structure that is designed to detect and sanction poor performance when it occurs; a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and reasonable assurances that the reported data is accurate.)

<sup>4</sup> By setting out measures that are missing from the proposed list, the Texas Commission does not mean to diminish the importance of other measurements currently captured under the Texas plan. The Texas Commission believes that the performance measurements and performance remedy plan currently in place in Texas, attached as Attachments A and B, should serve as an overall guide to what the Texas Commission believes are minimally acceptable performance measurements.

detriment of other entry mechanisms specifically provided for in the Act.<sup>5</sup> Accordingly, the Texas Commission urges that any performance measurements that are established should include measurements designed to capture performance for UNE-P and resale.

In addition, the Texas Commission believes it is important for the measurements to include all loop types, including xDSL capable loops. In order to facilitate the FCC's goals for broadband deployment, the Texas Commission believes that sufficient measurements should be established to monitor the ILECs' performance in these areas. Without sufficient performance measurements for xDSL, ILECs may have little incentive to provide sufficient wholesale service to CLECs. It has been our experience in Texas that SWBT's performance results for several of the xDSL-related measurements have consistently failed to meet the appropriate benchmark or parity standard (as currently defined). The Texas Commission has continually monitored this situation in an attempt to improve SWBT's overall performance or to understand changes required to allow the performance measurement to better assess SWBT's service to its wholesale xDSL customers. Without inclusion of those measurements, however, the Texas Commission may lack sufficient information to address these performance issues. Accordingly, we believe it is important that the FCC include xDSL-capable loops in any measurements that it ultimately adopts.

#### **A. Pre-Order Measurement**

The NPRM proposes one measurement for preorder that measures the timeliness of the response time that CLECs get when accessing customer service records (CSRs) from the underlying ILEC. The Texas Commission believes that the purpose of the proposed measure is extremely important, as this is ordinarily the first customer encounter, and timely and accurate information is vital to promote competition. However, it is unclear whether the proposed measurement is intended to include all preorder activities that are vital to efficient interaction with the end-use customer. For example, these activities may include address verification, telephone number, CSR, service availability, due date, dispatch information, PIC, actual loop make-up information, designed loop make-up information, and protocol translation time. In addition, the ILEC's legacy systems may be different from the multiple pre-order interfaces that are available to CLECs submitting pre-order inquiries, making a parity

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<sup>5</sup> 47 U.S.C. § 251(c).

comparison problematic. Because of all of the variables included in the pre-order measurement, the Texas Commission has determined that the best way to receive meaningful data is by establishing a separate benchmark for each activity field for pre-order inquiries. In addition, benchmarks may need to be established for more than one interface.

### **B. Order Status Measurements**

The NPRM has proposed three measurements, order notifier timeliness (FOC), order completion notifier timeliness (SOC), and percentage of jeopardies. The Texas Commission believes that these three measures are extremely important. In addition, however, other important measurements may be missing. For instance, OSS interface availability, percent rejects within a specified time period, and overall order process flow-through, are three performance measurements that the Texas Commission believes are crucial, because they are competition affecting. If a system specific to CLECs is unavailable for an extended period of time or for a specific geographic area, the CLECs' ability to submit orders is impaired. In addition, if the ILEC fails to notify the CLEC of a rejected order within a short time frame, the CLECs' ability to correct that order in a timely fashion may directly impact the end-use customer's ability to obtain service from the CLEC. Finally, the overall order process flow-through measurement is crucial to determining the ILEC's ability to process orders without use of manual intervention.<sup>6</sup> The Texas Commission has observed through its experience that anytime an order is subjected to manual handling, errors are introduced into the provisioning process, which directly impacts the error rates of orders.

### **C. Provisioning Measurements**

The NPRM has proposed five provisioning measurements, percentage on time performance, average delay days on missed installation orders, installation quality, percentage missed appointments, and open orders in hold status. The Texas Commission applauds the proposed measurements for provisioning and believes that these measurements generally capture the critical areas of ILEC performance. However, it does not appear that the proposed measurements establish any criteria or standards for trunk blockage. The provisioning measurements by themselves may not adequately capture design, planning and engineering of interconnection trunking facilities. The

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<sup>6</sup> *SWBT Texas 271 Order*, para. 179.

Texas Commission believes that this type of measurement is critical for facilities-based providers. In addition, it does not appear that NXX migration and local number portability (LNP) measurements are included within the NPRM. Timely provisioning of NXX and LNP are crucial for facilities-based providers as well. Without measuring timely provisioning in these areas, ILECs have no incentive to accurately and timely provide these services, which are directly customer affecting.

#### **D. Maintenance and Repair Measurements**

The NPRM has proposed three measurements, trouble report rate, repeat trouble report rate, and time to restore. The Texas Commission generally believes that these measures are adequate. However, in the Texas Commission's experience we believe that the trouble report rate may actually overstate the actual number of troubles recorded if that measurement includes both the repeat troubles and the troubles that are experienced during installation. Therefore, it is important that the trouble report calculation reflect the exclusion of reports captured elsewhere. It is unclear from the proposal whether this is a concern. In addition, specifically for UNE-P and resale, an additional maintenance and repair measurement should be considered. A measurement that captures the percent out of service lasting less than 24 hours is important because of the direct parity comparison with the ILEC's retail activity. The Texas Commission has found this measurement is a valuable tool for UNE-P and resale providers to ensure parity treatment.

#### **E. Billing Measurements**

The Texas Commission believes that billing measurements should be included in any measurements that the FCC ultimately adopts. Minimally, the FCC should include billing measurements for the percent of accurate and completely formatted bills and mechanized billing timeliness. The Texas Commission has found that these measures are important to prevent CLECs from double billing or billing inaccurately their end-use customers. As these measures are directly customer affecting, the Texas Commission views them as critical to maintaining a competitive market.<sup>7</sup>

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<sup>7</sup> *Bell Atlantic New York Order*, para. 226; *SWBT Texas 271 Order*, para. 210.



#### **IV. Implementation, Reporting Procedures, Performance Evaluation, and Statistical Issues**

The Texas Commission agrees that third-party validation is appropriate when changes are made to the performance measurements to ensure that accurate implementation and reporting have occurred. In addition, the Texas remedy plan provides for a CLEC to request an audit to resolve issues regarding the accuracy or integrity of data collected, generated, and reported. The CLEC is initially responsible for the expense of such audit; however, if the subsequent audit reinforces the issue raised by the CLEC, the ILEC is required to reimburse all expenses. This balances the CLEC's ability to assess the accuracy of performance data with the ILEC's burden of submitting to unnecessary or frivolous audit requests.

Furthermore, the Texas Commission believes that a collaborative process to review the measurements is appropriate. In Texas, the measurements are subject to a collaborative review every six months. This has proven workable in Texas; however, the Texas Commission believes that the FCC must balance the need for frequent reviews with the ability of the ILECs to implement changes to the measurements.

The Texas Commission believes that reporting the measurements on a monthly basis is the best way to receive data and ensure that trouble areas are identified in a timely manner and effectuate performance improvement. The Texas Commission believes that the current way the performance measurements are reported in Texas (i.e. DOJ reports) would be beneficial for national standards. However, the Texas Commission believes that any penalty payments calculation may need to be reported separately to allow sufficient analysis and verification. In addition, CLECs in Texas that have requested raw data receive such data in an Microsoft Access format.

At the federal level, it may be appropriate to report statistics on a state-wide basis. However, it is our experience that in a state such as Texas it is important to receive data in a more disaggregated level. In Texas, data is disaggregated into four market regions. This approach balances the regulatory burdens placed on SWBT (i.e. not disaggregating at the exchange level), while allowing the Texas Commission and other CLECs to adequately gauge if SWBT is concentrating its efforts into one region. In addition, it allows for diagnosis of systemic problems in one area or another. Furthermore, the ILECs should report performance data for all CLECs, individual

CLECs, and for its retail operations and/or its affiliates, as appropriate. This type of reporting structure allows all parties to rigorously evaluate the performance data.

Finally, the remedy plan in Texas currently uses the modified Z statistic, to evaluate compliance with parity or benchmark measurements. The remedy plan also allows for Type 1 and Type 2 errors and random variation by establishing a table of K values and critical Z factors. For penalty assessments, the Texas Commission has established a two-tiered structure. Tier 1 damages are payable to CLECs and Tier 2 assessments are payable to the State. The Texas Commission believes that a remedy plan is necessary in conjunction with performance measurement standards to provide a competitive safeguard and to prevent backsliding. We encourage a similar provision if national measurements are established.

The Texas Commission appreciates the opportunity to comment on the Commission's NPRM, and to assist the FCC in developing long-term solutions to the issues addressed.

**Respectfully submitted,**

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**January 22, 2002**

**/original signed/**

**Brett A. Perlman  
Commissioner**

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